

### **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Final Office Action dated April 28, 2009, is respectfully requested in view of this amendment. By this amendment, claims 1-7 have been amended and new claims 8 and 9 have been added. Claims 1-9 are pending in this application and presented for examination.

The amendment to claim 1 includes descriptions of multiple rows of pins used to make the structure of the fabric and the subsequent rows of pins making a weave of weave-weft courses to give the tube a peak and trough profile. This is described as forming a structure having trough areas and peak areas as determined by a repetition of weave areas, so that by varying the weave structure of the yarns, tube flexibility and bendability apart from that produced by the different types of yarn used and the density of the stitches is produced. New claims 8 and 9 describe specific features of second or second and third rows of pins. Support for these changes is found in the specification and drawings, *inter alia*, at Paragraphs [0025] and [0035] (as published in U.S. Published Patent Application No. 2007-0131302).

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132.

In the Final Office Action, the Examiner objected to the disclosure due to informalities and rejected claims 1-7 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,854,298 to Relats, et al. (hereinafter *Relats '298*), taken in view of U.S. Patent No. 6,711,920 to Akers et al. (hereinafter *Akers*). These rejections, as applied to the revised claims, are respectfully traversed.

### **Objections to the Specification**

The Examiner objected to the specification as describing the fabric manufacturing process as "weaving" instead of "knitting", in that "weaving" and "knitting" are two different processes.

**Response**

This objection is respectfully traversed because the specification meets the requirements of 37 CFR 1.71(a) and (b), and because both "knitting" and "weaving" are justifiable descriptions of the present subject matter.

The specification is required to include a description "in such particularity as to enable any person skilled in the pertinent art or science to make and use the invention without involving extensive experimentation. An applicant is ordinarily permitted to use his or her own terminology, as long as it can be understood." (MPEP §608.01(g)) Accordingly, the test for the descriptive term is not whether it is the most accurate for peer review purposes (if such peer review exists in a given field of art), but rather whether the terminology is sufficiently erroneous to prevent the skilled artisan from understanding the described technique or structure. In the present case, it is not; Applicants' description of the fabric as "woven" is acceptable in industry, much as "voltage" is used in lieu of "electromotive force".

Next, one must determine if a person reading the specification would be misled by the description which includes the term "woven". In this case, the technique used by Applicants is described in detail in the specification. Applicants respectfully point out paragraphs [0023] - [0025] of the specification (as published in U.S. Published Patent Application No. 2007-0131302), which describes a type of pin-weaving. The specification also describes this as "warp-knitting" which produces a woven fabric having a weft and forming a three-dimensional fabric configuration. The fabric structure is specifically stated as a "weave structure" in a manner which can be understood by the skilled artisan:

"[0024] Weave structure: (see the drawing with the weave and threading structure).

<u>P-1</u>	<u>P-2</u>	
2 – 0	0 – 0	} × <i>n1</i>
0 – 2	8 – 8	
2 – 0	2 – 0	} × <i>n2</i>
0 – 2	6 – 8	

Therefore, the matter of whether the fabric should properly be called "knitted" or "woven" becomes an academic one, and in the case of the present disclosure, there is adequate justification for both descriptions. The artisan can easily determine what type of fabric is being described, regardless of whether the artisan considers the fabric "knitted" or "woven".

In this regard, Applicants again draw the Examiner's attention to the *Relats* '298 reference, which addresses technology related to a woven structure which could be considered knitted.

It is therefore respectfully submitted that the terminology used by Applicants is acceptable in the industry. It is further respectfully submitted that the specification clearly states the scope of the technology being used and clearly describes the type of fabric manufacture used.

In this case Applicants are using their terminology in a manner that can be clearly understood by those skilled in the art. Accordingly, the terminology meets the requirements of MPEP §608.01(g), in that the description is such "as to enable any person skilled in the pertinent art or science to make and use the invention."

Accordingly, Applicants respectfully request withdrawal of the objection to the specification.

**Rejections Under 35 U.S.C. §112**

The Examiner rejected claims 1-7 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the reference to "weave" and "weft course" was deemed unclear.

**Response**

By this Response and Amendment, the rejections to claim 1 is respectfully traversed, and reconsideration and withdrawal of the rejection are respectfully requested.

35 U.S.C. §112, second paragraph, states that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

The specification clearly sets forth the terminology in terms which are clearly understood by artisans. By way of example, Paragraph [0022] describes the general parameters of the material and the structure achieved by means of a weave of weft courses obtained with two or three rows of pins. Paragraphs [0025] and [0035] describe specific pin arrangements used to make a weave of chain stitches to make the structure of the fabric.

It is therefore respectfully submitted that the rejection under 35 U.S.C. 112 should be withdrawn.

**Rejections Under 35 U.S.C. §103**

The Examiner rejected claims 1-7 under 35 U.S.C. §103(a) as being unpatentable over *Relats '298*, taken in view of *Akers*. *Relats '298* is cited as showing first yarns which form a weave of weft courses combined with stitch courses and a second weave forming a similar weave of weft courses combined with stitch courses. *Akers* is cited as showing a flexible protective

tube which includes larger diameter zones and smaller diameter zones which are alternated along the length of the tube.

### **Response**

This rejection is traversed as follows. To show obviousness under §103, it is necessary to show an incentive to benefit from the change. *KSR International Co. v. Teleflex Inc. et al.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

"The proper question to have asked was whether a pedal designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading Asano with a sensor. In automotive design, as in many other fields, the interaction of multiple components means that changing one component often requires the others to be modified as well." (*id* at 127 S.Ct. 1744)

A demonstration of obviousness under §103 requires that the combination represent a design step well within the grasp of a person of ordinary skill in the relevant art. *id*.

"KSR provided convincing evidence that mounting a modular sensor on a fixed pivot point of the Asano pedal was a design step well within the grasp of a person of ordinary skill in the relevant art. (*id* at 127 S.Ct. 1746)

The standard for anticipation under 35 USC 102 and obviousness under 35 USC 103(a) following *KSR* is detailed in *Forest Labs v. Ivax Pharmaceuticals*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). In *Forest Labs*, the court determined that a reference mentioned a particular chemical component, but did not explain how to obtain it and therefore deemed that, "A reference that is not enabling is not anticipating." The court then deemed the product was therefore unobvious over that reference.

Applicants' claim 1 sets forth:

"Flexible protective corrugated tube ... wherein ... a weave of chain stitches from a first row of pins and a weave of weave-weft courses from a combination of ... subsequent rows of pins to give the tube a peak and trough profile ... characterized by trough areas and peak areas ... whereby a variation in the weave structure of the yarns has an effect on tube

flexibility and bendability apart from that produced by the different types of yarn used and the density of the stitches."

This configuration provides the advantage of a three dimensional structure in which the trough areas and peak areas are controlled by controlling the weave structure, and the weave structure controls the flexibility and bendability of the tube. This permits the tube to be designed with a particular set of yarns and yarn materials with the end product having the desired characteristics useful for "protect[ing] electrical cables, fluid ducting and gas pipes in aggressive areas as a result of vibrations, rubbing, significant temperature changes, impacts, the presence of dirt etc. ... in the electronic, aerospace, automobile and railway equipment industries.

*Relats '298* shows a fabric structure in which sequential weaves of threads are made with different needle arrangements, and describes the use of tricot stitches in certain rows of the weave. There is no suggestion, however, of a configuration in which "the structure of the fabric comprises a weave of chain stitches from a first row of pins and a weave of weave-weft courses from a combination of one or more subsequent rows of pins to give the tube a peak and trough profile." Further, *Relats '298* does not describe the use of "trough areas and peak areas" in which "a variation in the weave structure of the yarns has an effect on tube flexibility and bendability apart from that produced by the different types of yarn used and the density of the stitches."

*Akers* completely avoids the issue of alternating threads, in that corrugations are depicted as constructed of similar weaves using different weave densities. See *Akers*, at Figs. 2, 2A and 2B in this regard. Therefore, *Akers* is not enabling under *Forest Labs*. The combination of *Relats '298* and *Akers* fails to meet the *KSR* test because the configurations are such that the variations are effected without the features as set forth in claim 1 of the present application.

Applicants therefore respectfully submit that the *Relats '298* and *Akers* references do not teach or suggest all the features as recited in claim 1.

Additionally, Claims 2-9 are written in dependent form and depend from claim 1. Those dependent claims should be allowable for at least the same reason that these independent claims are allowable.

It is therefore respectfully submitted that the rejection under 35 U.S.C. §103(a) should be withdrawn and the case be passed to issuance.

#### **Claims 8 and 9**

Claims 8 and 9 are written in dependent form and depend from claim 1. Claims 8 and 9 further describe specific configurations in which a second row of pins (claim 8) or second and third rows of pins (claim 9) are used to provide an arrangement in which a length or width of each peak area and trough area determined by an amount of times of consecutive repetition of the respective courses. It is submitted that this configuration further distinguishes the claimed subject matter over the cited references.

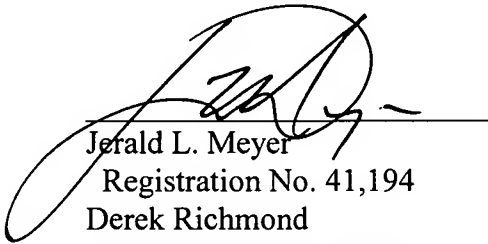
### CONCLUSION

In light of the foregoing, Applicants submit that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

Respectfully submitted,  
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